IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11076 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)
Versus
CHATURBHAI CHUNILAL PARMAR - Respondent(s)

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Appearance :
MS JYOTI MEHTA for Petitioner(s) : 1,
MS SUNITA S CHATURVEDI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 29/06/2007

ORAL JUDGMENT

1. Heard Ms.Jyoti Mehta, learned counsel for the petitioner and Ms.Sunita Chaturvedi, learned counsel for the respondent.

2. Short facts necessary for disposal of the present writ application are that the respondent, who was employed as a conductor with the petitioner - Gujarat State Road Transport Corporation, was working as a conductor in the bus, on 18/11/1994, a surprise check was made in the bus and it was found that the respondent had collected bus fair from three different persons at the rate of Rs.1.75 ps. totalling to Rs.5.25 ps., but did not issue tickets, a chargesheet was issued and after providing appropriate and due opportunity of leading evidence and hearing to the respondent workman, the disciplinary authority held that the respondent was guilty of the misconduct. The authority directed award of reduction by 7 years to the original post and pay. Being aggrieved by the said punishment, the workman preferred an appeal, which was partly allowed and the punishment was reduced from 7 years to 5 years, still dissatisfied respondent came before the Industrial Tribunal, the Industrial Tribunal after hearing the parties held that the findings into the guilt of the workman, were absolutely justified but the punishment was disproportionate to the misconduct. It, accordingly, reduced the punishment from 5 years to 6 months. Being aggrieved by the said award

dtd.16/12/2002, passed by the Industrial Tribunal, Vadodara in Reference (I.T.) No.224 of 1999, the establishment – ST Corporation is before this Court.

3. Ms.Mehta, learned counsel for the petitioner submits that the present was not a case where any person of prudence could hold that the punishment was shockingly disproportionate. She submits that in view of the findings recorded by the learned tribunal that the respondent had committed misconduct, the establishment had already shown extra grace by not removing the respondent workman from service, though termination would be the appropriate punishment. She submits that the Industrial Tribunal had no jurisdiction to interfere with the quantum of the punishment, unless it recorded the finding that the punishment was shockingly disproportionate.

4. Ms.Chaturvedi, learned counsel for the respondent workman submitted that present was not a case of embezzlement or misappropriation, but present was a case where because of shortage of time, the workman could not issue tickets right in time. She submits that the findings that the workman committed misconduct, are contrary to the records. She also submits that present is a case where punishment is shockingly disproportionate

and under the circumstances, the Industrial Tribunal was justified in interfering in the matter.

5. It is not in dispute before me that against the findings recorded by the Industrial Tribunal, the workman has not filed any proceedings either before this Court or before any other competent forum. If the petitioner was satisfied and content with the findings and the quantum of punishment, then, in a writ filed by the other-side, he cannot be allowed to say that the findings into the misconduct of the workman, are bad. The said findings were required to be challenged independently and in absence of such a challenge to the findings, the findings would stair at the respondent workman.
6. As the findings relating to guilt of respondent workman have not been challenged by the respondent workman, the said findings have attained finality.
7. In view of the findings recorded by the Industrial Tribunal that the workman committed misconduct by not issuing tickets despite receiving the fair, the question still would be whether the Industrial Tribunal was justified in interfering into the quantum of punishment.
8. In a service contract, parties agree that the master would pay the salary as agreed and the workman agrees that he

would discharge his duties honestly, sincerely and in accordance with the directions of the master. There is bond of confidence between the master and the servant. If somebody commits breach of it, then, the bond is broken and the person who commits the wrong, would be liable to be punished.

9. In a case where the master is given authority to take appropriate action against the workman, then, the jurisdiction would be with the master to draw proceedings, hear the delinquent and record a finding. The master, who is the disciplinary authority, would be entitled to record a finding either into innocence or guilt of the delinquent. Once the finding into the guilt is recorded, then, the question of punishment would again be within the discretion of the master. The Labour Court, Industrial Tribunal including the High Court would be entitled to interfere with the quantum of punishment, if the Court or the tribunal holds that the punishment was shockingly disproportionate to the misconduct committed.

10. In a case where duty is assigned to the workman to receive money and deposit the same with the master, then, non-deposit of the money by not issuing the tickets

to the passengers, the workman commits embezzlement and a misconduct. The Industrial Tribunal had no jurisdiction to interfere with the quantum of punishment, unless, it had found special reason that the findings recorded by the domestic tribunal was wrong. Once the finding into the guilt of the workman are confirmed, then, the sole question would be whether the quantum of punishment was shockingly disproportionate conferring jurisdiction upon the tribunal to interfere or the Labour Court / Industrial Tribunal should refuse to interfere in the matter, taking award of the punishment to be the discretion exercised by the master.

11. In the present case, I do not find any reason in the impugned Judgement and Award that the learned tribunal has justified its interference in the matter. The tribunal has simply observed that the punishment was disproportionate qua misconduct, but it has given no reason as to why it is disproportionate.

12. The Apex Court of late had said that in cases of defaulcation, embezzlement etc. appropriate punishment would be the termination from service. If such is the approach of the Courts, then, the award of 5 years down grading from present status, in fact, be a punishment on

the lower side and would amount to shockingly disproportionate punishment, because, instead of dismissal of such a person, he is still continued in the service.

13. The impugned Award made by the Industrial Tribunal, Vadodara in Reference (I.T) No.224 of 1999 dtd.16/12/2002 is hereby quashed and set aside and the order of the appellate authority (domestic) is hereby restored. The Reference made at the request of the respondent workman is rejected. The petition is allowed. Rule is made absolute to the aforesaid extent. No costs.

(R.S. GARG, J.)

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